

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT D. GRIFFIN,

Plaintiff,

V.

DAN WHITE, et al.,

## Defendants.

CASE NO. C18-5133 BHS-JRC

## ORDER MODIFYING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 6), and Plaintiff’s objections to the R&R (Dkt. 7).

On March 20, 2018, Judge Creatura entered an order requiring that Plaintiff show cause why this case should not be consolidated with Plaintiff's separate lawsuit, *Griffin v. White*, 3:17-cv-05841-RBL-JRC, also pending in this district. Dkt. 5. Judge Creatura instructed Plaintiff to file a response no later than April 20, 2018, or face dismissal or consolidation *sua sponte*. *Id.* at 2. Plaintiff did not respond to the show cause order. On May 11, 2018, Judge Creatura entered the R&R and recommended the dismissal of Plaintiff's complaint without prejudice. Dkt. 6. On May 18, 2018, Plaintiff objected to the R&R. Dkt. 7.

1       The district judge must determine de novo any part of the magistrate judge's  
2 disposition that has been properly objected to. The district judge may accept, reject, or  
3 modify the recommended disposition; receive further evidence; or return the matter to the  
4 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

5       Plaintiff's objection requests that the Court consolidate the cases instead of  
6 dismissing his present complaint without prejudice. Reviewing the most recent amended  
7 complaint in *Griffin v. White*, 3:17-cv-05841-RBL-JRC, it is clear that these cases are  
8 predicated on the same alleged series of transactions or conduct and should be heard at  
9 the same time by the same judge. Plaintiff does not provide any explanation for his  
10 failure to timely comply with Judge Creatura's show cause order, which plainly stated  
11 that failure to respond would result in consolidation or dismissal. However, dismissal  
12 without prejudice would mean that Plaintiff could still raise his claims by filing a motion  
13 and seeking leave of the Court in *Griffin v. White*, 3:17-cv-05841-RBL-JRC. Any  
14 functional distinction between consolidating the cases or dismissing without prejudice is  
15 de minimus.

16       The Court having considered the R&R, Plaintiff's objections, and the remaining  
17 record, does hereby find and order as follows:

- 18           (1)     The R&R is **MODIFIED**; and
- 19           (2)     This action is **CONSOLIDATED** with *Griffin v. White*, 3:17-cv-05841-  
20 RBL-JRC.

21       The Clerk is directed to file this order in Cause No. 3:18-cv-05133-BHS and  
22 Cause No. 3:17-cv-05841-RBL-JRC and then close Cause No. 3:18-cv-05133-BHS. No

1 additional documents shall be filed in Cause No. 3:18-cv-05133-BHS and all future  
2 documents regarding these matters are to be filed in Cause No. 3:17-cv-05841-RBL-JRC.

3 **IT IS SO ORDERED.**

4 Dated this 19th day of June, 2018.

5  
6   
7 

---

  
BENJAMIN H. SETTLE  
United States District Judge

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22